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July 3, 2019

VIA ECF

Honorable John G. Koeltl
United States District Court
 for the Southern District of New York
500 Pearl Street
New York, New York 10007-1312

> Re: **Rivera v. Home Depot U.S.A., Inc./Home Depot U.S.A. Inc. v. Bryan's Home
> Improvement Corp.; 16-cv-7552 (JGK)**

Dear Judge Koeltl:

Please accept this amended letter as a replacement to the letter submitted by me yesterday in response to Mr. Rivera's June 27, 2019 letter. The below paragraphs are identical in content to the letter I electronically filed yesterday, but this correspondence fixes some typographical errors contained in yesterday's correspondence which warranted correction.

This firm – together with Bondurant, Mixson & Elmore, LLP – represents Home Depot U.S.A., Inc. in the above-referenced action. Home Depot is both a Defendant in Mr. Rivera's initial action and a Third-Party Plaintiff in Home Depot's Third-Party action against Bryan's Home Improvement Corp. ("BHIC"). We submit this response to Mr. Rivera's June 27, 2019 letter in accordance with Your Honor's June 28, 2019 direction.

Home Depot has no objection to Mr. Rivera's request for permission to renew his motion to amend his Judgment against Home Depot to seek costs and interest. Home Depot, however, does request the opportunity to oppose that motion on the merits of whether Mr. Rivera is entitled to recover costs and interest and the amount of any such costs and interest that Mr. Rivera may seek.

Similarly, Home Depot had filed a motion for attorneys' fees against BHIC (ECF No. 168) that Judge Forrest had terminated with leave to renew after the appeal (ECF No. 177). Home Depot intends to file a new motion for attorneys' fees that includes the additional fees incurred on appeal on or by July 12, 2019.
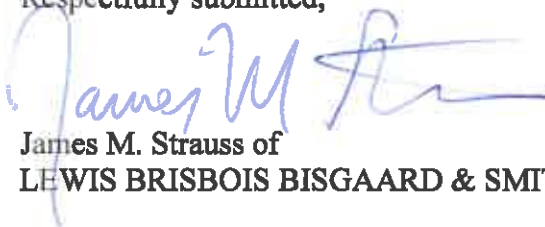
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Finally, Home Depot respectfully requests that the Court require a submission from all three parties on whether to extend the stay of Mr. Rivera's Judgment against Home Depot. Two Judgments were entered in this case: (i) Mr. Rivera won a judgment against Home Depot and (ii) Home Depot won an identical judgment against BHIC. As the Court's Stay Order points out, the two Judgments, "though technically entered separately, operate in unison pursuant to a series of earlier decisions by the Court concluding that BHIC – not Home Depot – was ultimately responsible for plaintiff's injuries." ECF No. 180 at 2. The Court stayed Mr. Rivera's Judgment pending BHIC's appeal to prevent irreparable injury to Home Depot and to prevent the risk of imposing additional, inefficient litigation on the court system. Id. at 3-4.

Although BHIC's appeal has been resolved, BHIC's counsel has informed Home Depot that both BHIC and its insurer – the New York State Insurance Fund (which has not made an appearance in this matter nor sought to intervene) – will not honor Home Depot's Judgment against BHIC. BHIC's and the Fund's stated intention to force continued litigation over Home Depot's Judgment despite the Second Circuit's decision to affirm both Judgments, imposes the same risks of irreparable harm and judicial inefficiency that led the Court to enter the stay. Id. at 3-4. Accordingly, Home Depot respectfully requests that the Court Order a conference with the parties to determine what additional proceedings will be necessary in this action and to flesh out whether and on what basis BHIC and the State Insurance Fund intend to resist the Court's Judgment entered in favor of Home Depot. Alternatively, Home Depot respectfully requests that the Court Order BHIC to inform Your Honor the basis for BHIC's and its insurer's non-payment position, and then allow Rivera and Home Depot an opportunity to submit filings regarding the propriety of continuing the stay if necessary.

Thank you in advance for your consideration of this matter.

Respectfully submitted,

James M. Strauss of
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JMS
cc: All counsel (via ECF)

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